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IN THE HIGH COURT OF MADHYD PRADESH AT JABALPUR

M.P.No. 196 OF 1990

PETITIONER .. .. Narendra Kumar Tiwari
S/o. Shri Gorelal Tiwari,
Ex-Branch Manager,
Bilaspur-Raipur Kshetriya
Gramin Bank, Head Office -
Bilaspur, Resident of -
Sarkanda, Bilaspur (M.P.)

V E R S U S

RESPONDENTS .. .. 1. Bilaspur-Raipur Kshetriya
Gramin Bank, Head Office
Dayalband, Bilaspur (M.P.);

2. The Chairman, Bilaspur -
Raipur Kshetriya Gramin
Bank, Head Office -
Dayalband, Bilaspur, M.P.;

3. The Board of Directors,
Bilaspur-Raipur Kshetriya
Bank, Head Office -
Dayalband, Bilaspur, M.P.

629

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT OF MANDAMUS OR OTHER APPROPRIATE WRIT OR ORDER OR DIRECTION IN THE NATURE OF WRIT ETC.

NOTARY

The Petitioner named above respectfully begs to apply as follows :-

1. That the Petitioner is a citizen of India. He is ex-Branch Manager of Bilaspur-Raipur

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 146 of 1991

Petitioner : Narendra Kumar Tiwari

Versus

Respondents : Bilaspur-Raipur Kshetriya Gramin Bank and others

Post for order on 12th July, 2006.

Sd/-
SATISH K. AGNIHOTRI
Judge

640

**HIGH COURT OF JUDICATURE CHHATTISGARH : AT BILASPUR**

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**SINGLE BENCH : HON'BLE SHRI SATISH K. AGNIHOTRI, J.**

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**WRIT PETITION NO. 146 OF 1991**

**PETITIONER**: : Narendra Kumar Tiwari

Vs.

**RESPONDENTS**: : Bilaspur- Raipur Kshetriya Gramin Bank & others.

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**Present:** Shri P.S. Koshy and Shri Aneesh Pandey, counsel for the petitioner.

Shri Kashif Shakeel and Shri P.K. Bhaduri, counsel for the respondents.

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**ORDER**
**(Passed on 12th July, 2006)**

The present writ petition filed under Articles 226/227 of the Constitution of India impugns the orders dated 25/10/1989 (Annexure-P/1) and 12/06/1990 (Annexure-P/2) on the ground that the petitioner was denied reasonable and adequate opportunity of defence in violation of the Regulation 30 (2) of Bilaspur – Raipur Kshetriya Gramin Bank Staff Service Regulation, 1980 (hereinafter referred to as "**Regulation**"). The petitioner was not supplied the list of documents and list of witnesses along with the charge-sheet before commencement of the enquiry. The Enquiry Officer was the Branch Manager, Sarsiwa Branch holding the same rank and as such he was incompetent to conduct the enquiry.

(2) The undisputed facts, in nut shell, are that the petitioner was working as Branch Manager of Marod Branch of Bilaspur – Raipur

Kshetriya Gramin Bank, when he was placed under suspension by order dated 28/02/1986 (Annexue-P/3). A case was also registered against the petitioner punishable under the provisions of Section 420 of Indian Penal Code. The petitioner was arrested and released on bail on 03/11/1985. The petitioner was served with a charge-sheet dated 15/10/1986 (Annexure-P/4) containing one charge, which reads as under :

> "हमारी मरौद शाखा में शाखा प्रबंधक के रूप में कार्य करते हुए आपने हमारी दरबा शाखा के शाखा प्रबंधक श्री एम.के.गजपल्ला जो एक परिवीक्षाधीन अधिकारी थे, पर अपने वरिष्ठता का अबांछित प्रभाव जमाते हुए एवं उन्हें भ्रमित करते हुए ग्राम पुरैना में खरीफ सत्र 1985 में कुछ फसल ऋण स्वीकृत/वितरित कराया है जबकि ग्राम पुरैना शाखा मरौद के कार्यश्रेत्र में था तथा वहां आपके द्वारा ऋण वितरण भी किया जाता रहा था । आपने उपरोक्त कार्य दुराशय से प्रेरित होकर तथा अपनी वरिष्ठता एवं पद का दुरपयोग करते हुए किया है । आपका यह कृत्य बिलासपुर रायपुर श्रेत्रीय ग्रामीण बैंक कर्मचारी वृंद सेवा विनियम की धारा 30 (1) के प्रावधानों के अंतर्गत गंभीर कदाचार है । उक्त संदर्भ में आपको कर्मचारी वृंद सेवा विनियम की धारा 30 (2) के प्रावधानों के अंतर्गत आक्षेपों का विवरण एवं आरोप पत्र इस पत्र के साथ संलग्नकर प्रेषित किया जा रहा है तथा सूचित किया जाता है कि इस प्रकरण में विभागीय जांच कार्यवाही प्रस्तावित है" ।

(3) Reply to the said charge-sheet was filed by the petitioner on 30/10/1986 (Annexure-P/5). After filing of the reply, no action was taken by the Disciplinary Authority. In the meantime, another charge-sheet dated 02/02/1987 (Annexure-P/6) containing seven charges was issued against the petitioner. The said charges are as under :

> "(1) आपने श्रीमती झुनियाबाई, कन्हैयालाल चन्द्राकर,, सूर्यभानू प्रतापसिंह, शेखनलाल चंन्द्राकर एवं श्रीमती नीराबाई को, जो अन्य वित्तीय संस्थाओं के ऋणी

होने के कारण बैंक के नियमानुसार फसल ऋण प्राप्त करने के लिए अपात्र थे, प्रधान कार्यालय के स्पष्ट निर्देशों के प्रतिकूल कर्ज न होने का हलफलाना अनाधिकृत रूप से कराकर फसल ऋण वितरित किया । इस प्रकार आपने अपने पद का दुरपयोग करते हुए बैंक के नियमों एवं निर्देशों की अवहेलना की तथा बैंक में निष्ठा एवं ईमानदारी से कार्य करने की अपेक्षा के प्रतिकूल कार्य किया जो किन्ही व्यक्तिगत स्वार्थों से जिसकी जानकारी आपको ही हो सकती है, प्रेरित होकर किया गया है तथा ये कृत्य कर्मचारी वृन्द सेवा विनियम की धारा 17 एवं 19 के अंतर्गत कदाचार की श्रेणी में आते हैं

(2) श्रीमती झुनियाबाई एवं श्री कन्हैयालाल चन्द्राकर क्षेत्रीय ग्रामीण बैंक के लक्ष्य समूह के बाहर के व्यक्ति थे इन्हें फसल ऋण स्वीकृत करने तथा प्रधान कार्यालय से ऋण स्वीकृत कराने में आपने आवश्यक तथ्यों ( material facts) को छिपाया तथा जानबूझकर ऐसे व्यक्तियों को ऋण वितरित किया जो अन्य वित्तीय संस्थाओं के ऋणी थें । इस हेतु आपने अनाधिकृत रूप से कर्ज न होने का झूठा हलफनामा कराया । इस प्रकार आपने अपने पद का दुरपयोग करते हुए बैंक के निर्देशों के विपरीत एवं निष्ठा एवं ईमानदारी से कार्य करने की अपेक्षा के प्रतिकूल कार्य किया है, तथा जो किन्हीं व्यक्तिगत स्वार्थों की पूर्ति हेतु दुराशय से प्ररित होकर किया गया है अतः कर्मचारी वृंद सेवा विनियम की धारा 17 एवं 19 एवं 30 (1) के अंतर्गत ये कृत्य कदाचार की श्रेणी में आते हैं ।

(3) आपने श्रीमती कान्तीबाईं जौजे नोहरसिंह एवं श्री दशरथ सतनामी वे. सूबेचंद सतनामी जिन्होंने असत्य विवरण देते हुए अपात्र होने के बावजूद आपसे एग्राविका के अंतर्गत ऋण प्राप्त कर लिया था के क्रमशः पति श्री नोहरसिंह एवं पत्नी श्रीमती नीराबाई को कालान्तर में उक्त तथ्य की जानकारी होने के उपरांत भी

इसे अनदेखा करते हुए ऋण स्वीकृति की अनुशंसा की ऋण स्वीकृत किया । श्रीमती नीराबाई को आपने फसल ऋण स्वीकृत करने के लिए अनाधिकृत रूप से कर्ज नहीं होने का झूठा हलफनामा कराया जबकि फसल ऋण के प्रकरण में कर्ज नहीं प्रमाण पत्र लेना आवश्यक होता है । इस प्रकार आपने एग्राविका के अंतर्गत असत्य विवरण देकर ऋण लेने वाल ऋणियों के विरूद्ध आवश्यक कार्यवाही करने के बजाय उनके पति या पत्नी को बैंक के नियमों की अवहेलना करते हुए ऋण स्वीकृत किया है । आपके द्वारा उपरोक्त कृत्य पद का दुरूपयोग करते हुए, निष्ठा एवं ईमानदारी के विपरीत तथा किन्हीं व्यक्तिगत स्वार्थों की पूर्ति हेतु दुराशय से प्रेरित होकर किये गये हैं, जो कर्मचारी वृंद सेवा विनियम की धारा 17,19 एवं 30 (1) के अंतर्गत कदाचार है ।

(4) आपने श्री हरिशचन्द्र साहू तत्कालीन ग्राम सेवक विकास खण्ड कार्यालय कुरूद की पत्नी श्रीमती केजाबाई को जानबूझकर तथा तथ्यों को छिपाते हुए लक्ष्य समूह से बाहर होते हुए भी बुैंक से अनाधिकृत रूप से ऋण से ऋण उपलब्ध कराया तथा बाद में एग्राविका के अंतर्गत शामिल कर अनुचित रूप से अनुदान का लाभ भी पहुंचाया । यह कार्य आपने किन्हीं व्यक्तिगत स्वार्थों से प्रेरित होकर अपने पद का दुरपयोग करते हुए किया है, जो कर्मचारी वृंद सेवा विनियम की धारा 17,19 एवं 30 (1) के अंतर्गत कदाचार है ।

(5) आपने श्री सरजूराम साहू को कूप निर्माण के नाम से रू. 4,000/- ऋण उपलबध कराया तथा इस खाते में बिना आबंटन के अनाधिकृत रूप से रू. 2,000/- अनुदान भी जमा कर दिया । इस प्रकार आपने श्री सरजूराम को रू. 2,000/- का अनुदान एवं रू. 2,000/- बैंक नियमों के प्रतिकूल एवं किन्हीं व्यक्तिगत स्वार्थों

से प्रेरित होकर अपने कर्मचारी वृंद सेवा विनियम की धारा 17, 19 एवं 30 (1) के अंतर्गत कदाचार है ।

(6) आपने सर्व श्री बुधेला, नरोत्तम, मोहन, डोमारसिंह, राहीदास, चेतु, कपिलनाथ एवं तुलसी राम को प्रदाय किए गए एक एक दुधारू पशु के एवज में अनाधिकृत विक्रय पत्र एवं अप्रमाणित विक्रय मूल्य के आधार संबधित ऋणियों के ऋण खातों को नामे डालकर भुगतान किया । आपने यह कृत्य पद का दुरूपयोग करते हुए एवं व्यक्तिगत स्वार्थों से प्रेरित होकर दुराशय से किया है तथा जो कर्मचारी वृंद सेवा विनियम की धारा 17, 19 एवं 30 (1) के अंतर्गत कदाचार है ।

(7) आपने सर्वश्री रामलाल, थानूराम ,जीवानन्द, महेत्तरराम, श्रीमती प्रेमिन, बरसन सतनामी एवं सुखराम को लघु सिंचाई योजना के अंतर्गत कुंआ+पम्प हेतु ऋण विवेकीय अधिकार से परे स्वीकृत किया, इन सभी ऋण खातों में वसूली की स्थिति नगण्य है । इस प्रकार आपने प्रधान कार्यालय के निर्देशों की अवहेलना कर बैंक के हितों के विपरीत कार्य किया है, जो कर्मचारी वृंद सेवा विनियम की धारा 17 का उल्लघंन है ।

(4) It is alleged that no list of witnesses and list of documents with the charge-sheet were supplied to the petitioner. The petitioner submitted his reply to the second charge-sheet on 03/04/1987 (Annexure-P/7) pleading not guilty of all the charges. The charge-sheet dated 02/02/1987 (Annexure-P/6) was amended subsequently by letter dated 15/05/1987 (Annexure-P/8), which reads as under :

उपरोक्त आरोप पत्र में निम्नानुसार संशोधन किया जाता है –

(अ) आरोप पत्र क्र. 1 से श्रीमती नीराबाई का नाम विलुप्त समझा जावे तथा इससे संबधित आक्षेप में से भी श्रीमती नीराबाई का नाम विलुप्त समझा जावे।

(ब) आरोप क्र. 2 से संबधित आक्षेप की जगह निम्नानुसार पढ़े – " शाखा मरौंद में कार्य करते हुए आपने श्रीमती झुनियाबाई (कुल भूमि 6.32 एकड़) को दिनांक 6.7.83 को रू. 3000/– फसल ऋण स्वीकृत किया, तद् उपरान्त इसी वर्ष आपने इनके पुत्र श्री कन्हैयालाल चन्द्राकर ( कुल भुमि 13.41 एकड़) को रू. 8985/– फसल ऋण प्रधान कार्यालय से स्वीकृत कराया । श्रीमती झुनियाबाई एवं श्री कन्हैयालाल चन्द्राकर एक ही परिवार के सदस्य होने के कारण क्षेत्रीय ग्रामीण बैंक के लक्ष्य समूह के बाहर के परिवार है । आपने इस तत्य को जानबूझकर अनदेखा कर उक्त ऋण स्वीकृत किए/कराए । आपने प्रधान कार्यालय को श्री कन्हैयालाल चन्द्राकर का आवेदन पत्र स्वीकृति हेतु अग्रेषित करते समय इसमें इनकी मां को शाखा स्तर से स्वीकृत/वितरित किए गए ऋण की जानकारी नहीं दी । साथ ही जैसा कि पैरा एक में उल्लेखित है कि उक्त दोनों मां–पुत्र के अन्य वित्तीय संस्थाओं के ऋणी होने के बावजूद भी इनसे अनाधिकृत रूप से कर्ज न होने का झूठा हलफनामा प्राप्त कर आपने इन्हें ऋण वितरित किया है " । आरोप कमांक दो यथावत है ।

(स) आरोप क्र. 3 के अंतर्गत पृष्ठ क्र. 2 में लिखे गए वाक्य – "श्रीमती नीराबाई को आपने फसल ऋण स्वीकृत करने के लिए अनाधिकृत रू॰ से कर्ज नहीं होने का झूठा हलफनामा कराया जबकि फसल ऋण के प्रकारण में कर्ज नही प्रमाण पत्र लेना आवश्यक होता है " के स्थान पर निम्न वाक्य पढा जावें – "श्रीमती नीराबाई से उन्हें फसल ऋण स्वीकृत करते समय लिए गए कर्ज नहीं प्रमाण पत्र में देना बैंक कुरूद से कर्ज नहीं प्रमाण पत्र नहीं प्राप्त किया गया जबकि उक्त ग्राम देना बैंक कुरूद के कार्यक्षेत्र में आता है तथा श्रीमती नीराबाई उक्त संस्था की पूर्व ऋणी थी । इस प्रकार आपने जानबूझकर तथा बैंक को धोखा देने की नीयत से ऐसा कर्ज नहीं प्रमाण पत्र प्राप्त किया जो वस्तुस्थिति की सही जानकारी नहीं देता था तथा जिससे मात्र औपचारिकता पूर्ण होती थी ।"

आरोप क्र. 3 से संबधित आक्षेप के अंतर्गत पृष्ठ 3 में लिखे गए वाक्य साथ ही जैसा कि पैरा एक में उल्लेख है श्रीमती नीराबाई जो अन्य वित्तीय संस्था की ऋणी थी, को अनाधिकृत रूप से कर्ज न होने का हलफनामा लेकर औपचारिकताए पूर्ण करने का प्रयास किया ।" के स्थान पर निम्न वाक्य पढा जावे –

" श्रीमती नीराबाई से कर्ज नहीं प्रमाण पत्र प्राप्त करते समय देना बैंक कुरूद से कर्ज नहीं प्रमाण पत्र प्राप्त नहीं किया गया जबकि वह उस समय इसी संस्था की ऋणी थी अतः जानबूझकर बैंक को धोखे में रखने के कृत्य आपने किया है ।"

(5) The petitioner was called upon to submit his reply to the amended charge-sheet. The petitioner submitted his reply to the amended charge-sheet on 22/06/1987 (Annexure-P/9). After having received the reply of the petitioner, the respondents appointed one Shri M. Ram Prasad, Branch Manager of Sarsiwa Branch as Enquiry Officer. The petitioner was asked to submit his list of witnesses and documents in defence and the petitioner was supplied with a list of witnesses and that of documents. The enquiry was conducted in presence of the petitioner. In the meantime, the petitioner was acquitted of the charge under Section 420/34 of the Indian Penal Code in Criminal Case No.2085/1985, by order dated 01/12/1988 (Annexure-P/13). After examining entire evidence produced by the respondents as well as by the petitioner, the enquiry report dated 25/04/1988 (Annexure-P/15) was submitted to the Disciplinary Authority. The Disciplinary Authority issued a second show-cause notice to the petitioner on 06/06/1989 (Annexure-P/14) proposing penalty of dismissal. The petitioner submitted his reply to the show-cause notice on 05/07/1989 (Annexure-P/16). Agreeing with the enquiry report,

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the Disciplinary Authority imposed a major penalty of dismissal by order dated 25/10/1989 (Annexure-P/1) on the petitioner from service. The appeal preferred to the Board of Directors was also dismissed on 02/12/1989 (Annexure-P/17), which was communicated to the petitioner by order dated 12/06/1990 (Annexure-P/2).

(6) Shri P.S. Koshy, learned counsel appearing for the petitioner submitted that the respondents have amended the charges on several occasions, as such the charge-sheet itself was vitiated. The entire enquiry report in respect of charge of the first charge-sheet was based on the evidence of one witness produced by the respondents, who himself was involved in the said charge vide charge-sheet dated 15/10/1986. He further submitted that the petitioner has been acquitted in the criminal case and he could not have been dismissed from the charges which have not been proved. In regard to charge-sheet dated 15/10/1986, it was submitted that no charge-sheet was issued against Shri Gajpalla and neither the Disciplinary Authority nor the Appellate Authority considered this charge while imposing the punishment of dismissal. In regard to the second charge-sheet dated 02/02/1987, which contained seven charges, learned counsel submitted that the petitioner has submitted his reply to the said charge-sheet on 03/04/1987. In regard to the first charge, it was submitted that the State Government as well as the Head Quarters of the Bank had issued instructions for releasing loan by accepting affidavit and the Presenting Officer in the Departmental Enquiry, namely, Shri R.K. Gupta also admitted such an action before the Criminal Court which is evident from the order of acquittal dated 01/12/1988. In regard to the second charge, it was submitted that the petitioner has been exonerated from the said charge by the Enquiry Officer. In regard to the third charge,

it was submitted that a criminal proceeding was also initiated against the petitioner and he was acquitted of the said charge in the criminal case. No documents were produced by the Bank before the Enquiry Officer to prove the said charge. It was also submitted that Neera Bai was already a borrower of respondent No.2-Bank when the petitioner assumed the charge of the Branch Marod and she had submitted no dues certificate of other banks except Dena Bank and, therefore, taking the past record of Neera Bai, the petitioner had granted loan to her. The loan amount had already been recovered in due course of time without causing any loss to the Bank and the said fact has also been stated before the Enquiry Officer. The criteria for coming within the purview of IRDP, holding of land of a particular measurement alone was not the criteria, but, one of the basic requirement was the yearly income of the said family applying for the benefit under IRDP. In regard to the fourth charge, learned counsel submitted that the petitioner has already been acquitted of the said charge in the criminal case. The petitioner had made repeated reminders before the Enquiry Officer that Keja Bai and Harish Sahu are not husband and wife and said Harish Sahu never gave any authority letter. It was further submitted that to prove the said charge no witness was examined either in the departmental enquiry or before the criminal Court. In regard to the fifth charge, learned counsel submitted that the said allegation has been disproved from the report of Shri M.K. Saji. The said report clearly shows that when Shri M.K. Saji visited the site he found a well with six feet width and the entire loan amount had been repaid by the borrower, as such no loss was caused to the Bank. The said M.K. Saji was neither examined in the departmental enquiry nor he was a witness before the Criminal Court. In regard to the sixth charge, learned counsel submitted that the said

allegation has already been looked into by the Chairman of the Bank earlier and he had exonerated the petitioner after giving warning. It was submitted that the said charge has not been established by the Bank by adducing any evidence. The said charge cannot be sustained as the cattle were purchased after verification by the Veterinary Doctor of the State Government and inspection was done by the Committee consisting of the representatives of the DRDA/ Block Development Office, Insurance Company, Bank and the State Government. In regard to the charge No.7, learned counsel submitted that the petitioner had been exonerated from the said charge by the Disciplinary Authority. Learned counsel further submitted that in view of the above stated facts, it is clear that the charges have not been proved on the basis of sufficient evidence and some charges are contrary to the instructions issued by the respondents. Thus, learned counsel submitted that the instant writ petition deserves to be allowed and the petitioner be reinstated in service with full back-wages.

(7) Learned counsel appearing for the petitioner, in support of his submissions, placed reliance on the judgment of the Supreme Court in the case of **Trambak Rubber Industries Ltd. Vs. Nashik Workers Union & others** [1], wherein the Supreme Court held that where the findings are arbitrary and without any reasonable basis, interference by the High Court has been held to be justified. In the said case, the Supreme Court observed that there would have been travesty of justice if the High Court declined to interfere with the findings which are arbitrary and without any reasonable basis. Learned counsel also submitted that similar view has

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1. (2003) 6 S.C.C.-416,

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also been taken by the Supreme Court in the cases of **Yoginath D.Bagde Vs. State of Maharashtra and another** [2], and **Kuldeep Singh Vs. Commissioner of Police & others** [3]. Learned counsel further placing reliance on the judgment of the Supreme Court in the case of **G.M. Tank Vs. State of Gujarat & another** [4], submitted that when the criminal proceedings and the departmental enquiry were initiated on the similar set of facts and evidence, and the delinquent employee has been acquitted from the Criminal Court, findings contrary to this recorded in the departmental enquiry are unfair and oppressive and the dismissal order is liable to be quashed. Lastly, in regard to power of High Court under Articles 226/227 of the Constitution of India to interfere with the punishment, learned counsel placed reliance on the judgments in the cases of **Chairman and Managing Director, United Commercial Bank & others Vs. P.C. Kakkar** [5], and **. B.C. Chaturvedi Vs. Union of India and others** [6],

(8) Shri Kashif Shakeel, learned counsel appearing for the respondents, *per contra*, submitted that this Court has limited jurisdiction in the case of departmental enquiry where the petitioner – delinquent employee has been given sufficient opportunity for placing his case before the Enquiry Officer. It is submitted that the Enquiry Officer has considered all the materials produced by the parties and from the list of witnesses if only one witness is examined, the same does not vitiate the enquiry. The Enquiry Officer after having examined the entire materials at length, came

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2. (1999) 7 SCC -739 ; 3. (1999) 2 SCC -10

4. 2006 AIR SCW – 2709 ; 5. (2003) 4 SCC -364

6. (1995) 6 SCC – 749 ;

(651)

to the conclusion that the petitioner was guilty of charge Nos. 1,3,4,5,6 and 7. The Disciplinary Authority did not agree with the Enquiry Officer so far as charge No.7 was concerned and the finding in charge No.6 is not pressed in this proceeding. In regard to charge No.1, it is submitted that the submission of the learned counsel for the petitioner that he has acted in obedience with the instructions issued by the respondents in letter dated 13/01/1983 is not correct. It is submitted that the said letter was issued only to make the Branch Manager aware about the process of grant of loan in certain schemes and the said letter categorically states that 'if the applicant is an agriculturist or artisan who has opted for loan under Gramin Vikas Karyakram, Trisem, Special Component Plan and 20 Point Programme, then only loan can be granted to him under affidavit and in all other cases loan must be granted after obtaining no due certificate. It is submitted that there is also a letter dated 26/04/1986 which states that affidavits will be acceptable only if the applicant has taken loan under IRDP, Trisem and in all other cases loan will be sanctioned only after obtaining no dues certificate. Thus, it is submitted that the petitioner cannot take shelter under the letter dated 13/01/1983 and the petitioner has committed serious misconduct and has been rightly held to be guilty. In regard to charge No.3, learned counsel submitted that the petitioner had distributed loans to the persons not entitled to loans under IRDP as their land holdings exceed the limit of land holding. Under IRDP, loans can be granted to the most deserving farmers as it meant for help of those farmers whose land holdings and yields are small and cannot sustain the expenditure of farming wholly on their own. In regard to charge No.4, it was submitted that the petitioner has admitted in his examination that he indeed granted loan to the wife of Gram Sewak and

she was introduced to him by the husband and upon the words of her husband, the petitioner without verifying her antecedents granted loan to her only on the basis of oral assurance. In regard to charge No.5, it is submitted that the petitioner admitted that he sanctioned the loan for construction of a well, but, thereafter when the Field Supervisor inspected the site he found that no well is existed and in fact some earth has been dug on that spot and that too in very small dimension. The report of the Field Supervisor was shown to the petitioner in the enquiry and on the basis of the said report the petitioner has been held guilty for granting loan for a bogus purpose, because he failed to show that the loan amount was utilized for the purpose for which it was actually taken.

**(9)** Learned counsel appearing for the respondents placed reliance on the judgments of the Supreme Court in the cases of **Depot Manager, A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miya and others** [7] ; **Govind Das Vs. State of Bihar & others** [8]; **Rae Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh and others** [9],; **Apparel Export Promotion Council Vs. A.K. Chopra** [10]; **State of Andhra Pradesh & others Vs. S. Sree Rama Rao** [11] ; **Tara Chand Vyas Vs. Chairman & Disciplinary Authority & others** [12]; **R.S. Saini Vs. State of Punjab and others** [13], **Regional Manager, U.P. SRTC, Etawah and others Vs. Hotilal and another**[14] .

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| 7. | (1997) 2 S.C.C. 699 ; | 8. | (1997) 11 S.C.C. 361 |
| 9. | (1997) 3 S.C.C. 657 ; | 10. | (1999)1 S.C.C. 759 |
| 11. | AIR 1963 SC -1723 ; | 12. | (1997) 4 S.C.C. -565 |
| 13. | (1999) 8 SCC -90 : | 14. | (2003) 3 S.C.C. -605. |

(10) Having heard learned counsel for the parties and perused the records appended to the writ petition and to the return, it is evident that charge Nos. 1,3,4 and 5 have been found proved on the basis of sufficient evidence. So far as charge No.6 is concerned, that was given-up by the respondents at the time of hearing and charge No.7 which was found proved by the Enquiry Officer was also not accepted by the Disciplinary Authority while passing the impugned order of imposition of major punishment of dismissal from service.

(11) With regard to the first objection that the enquiry was conducted by the officer of the same rank, a Division Bench of High Court of Andhra Pradesh in the case of **Mohammad Ghouse Vs. State of Andhra Pradesh by its Chief Secretary, Secretariat, Hyderabad** [15], observed that 'the essential element in the awarding of penalties and punishments against public servants is not as to who conducts the enquiry, but whether the person has been given the opportunities referred to above and that the enquiry is fair and unbiased. I am in respectful agreement with the above observation of the learned Division Bench of the High Court of Andhra Pradesh.

(12) With regard to the charge of the charge-sheet dated15/10/1986, the finding was based on the evidence of one Shri Gajpalla. The objection that he himself was involved in the said incident and as such the enquiry was vitiated, is not tenable in law. The enquiry was conducted after affording sufficient opportunity of hearing to the petitioner and after having considered the evidence on record, the charge was found proved.

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15. AIR 1959 A.P. – 497.

(13) With regard to charge No.1 of the second charge-sheet dated 02/02/1987, the contention of the petitioner that the State Government and the Head Quarters of the Bank had issued certain instructions for releasing loan by accepting affidavit is not correct. Reading of Circular dated 13/01/1983 along with Circulars dated 26/04/1986 and 13/02/1983, would show that exemption from obtaining no due certificate was granted in cases of Integrated Rural Development Programme, Trisem, Special Component Plan and 20 Point Programme alone, not in all the cases of agriculturists. In the present case, the petitioner has granted loan in all types of cases, without insisting for no dues certificate. The charges No. 3, 4 and 5 have also been found proved on the basis of proper enquiry and on the basis of sufficient evidence. Charge No.3 has been found proved after examining all the relevant documents to the effect that while sending the case to the Head Quarter, it was not stated by the petitioner that Smt. Kanti Bai and her husband Nohar Singh were beyond the limit of IRDP if their holdings are taken jointly. The finding is based on the basis of sufficient evidence. In regard to charge No.4, the petitioner has granted undue benefit to Smt. Keja Bai by granting loan on 14/07/1983 and deliberately her husband's name was not written in the documents, but her father's name was written to extend undue benefit to Smt. Keja Bai. Hence, the charge has been found proved on the basis of sufficient evidence. In respect of charge No.5, the sanction was made for the purpose of repair of an old well. On enquiry, it was found that the well was not in existence at the given place, but on the adjacent area some excavation was done and that was not a well, as required under the conditions of grant of loan of Rs.4,000/-.

(14) The Hon'ble Supreme Court in the case of **State of Andhra Pradesh & others Vs. S. Sree Rama Rao** (Supra [11]) observed that where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.

(15) In the case of **Regional Manager, U.P. SRTC, Etawah and others Vs. Hotilal and another** (Supra[14]) the Hon'ble Supreme Court held thus :

> "the Court or Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live links between the mind of the decision taken to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. (See Alexander Machinery (Dudley) Ltd. V. Crabtree {1974 LCR 120 (NIRC)}. A mere statement that it is disproportionate would not suffice. A party appearing before a court, as to what it is that the court is addressing its mind. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee hold a position of trust where

honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable."

(16) In the case of **B.C. Chaturvedi Vs. Union of India and others** (Supra[6]) held thus :

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/ Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/ Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in

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violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/ Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case. "

(17) In the case of **Depot Manager, A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miya and others** (Supra [7]) the Hon'ble Supreme Court observed thus :

" the purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service."

(18) The Hon'ble Supreme Court in the case of **Govind Das Vs. State of Bihar & others** (Supra [8]) held thus:

" We find that the acquittal of the appellant is based on the view that the charges are not proved beyond reasonable doubt. Since the standard of proof required to prove a charge of misconduct in departmental proceedings is not the same as that required to prove a criminal charge, the acquittal of the appellant in the criminal case, in these circumstances, could not, in our opinion, be made the basis for setting aside the order for termination of the services of the appellant passed in the disciplinary proceedings on the basis of evidence adduced in the departmental enquiry

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conducted in the charges leveled against the appellant. We, therefore, find no merit in this appeal and the same is accordingly dismissed. No order as to costs."

(19) The Hon'ble Supreme Court in the case of **Rae Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh and others** (Supra [9]) held thus :

"Judicial review is not akin to adjudication of the case on merits as an appellate authority. The High Court, in the proceedings under Article 226 does not act as an appellate authority but exercises within the limits of judicial review to correct error of law or procedural errors leading to manifest injustice or violation of principles of natural justice. In this case, no such errors were pointed out nor any finding in that behalf was recorded by the High Court. On the other hand, the High Court examined the evidence as if it is a Court of first appeal and reversed the finding of fact recorded by the enquiry officer and accepted by disciplinary authority. Under these circumstances, the question of examining the evidence, as was done by the High Court, as a first appellate court, is wholly illegal and cannot be sustained. "

Thus, non-supply of documents along with the charge-sheet and non-examination of all witnesses is not a material factor to vitiate the enquiry and the said lapses do not amount to manifest injustice or violation of principles of natural justice. In the instant case, the petitioner participated in the enquiry after due notice and he was allowed to produce his defence.

(20) The Hon'ble Supreme Court in the case of **Apparel Export Promotion Council Vs. A.K. Chopra** (Supra[10]) observed thus :

" it is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate

authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impressible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty."

(21) In the case of **Tara Chand Vyas Vs. Chairman & Disciplinary Authority & others (Supra[12])** the Hon'ble Supreme Court observed thus :

" The thrust of the imputation of charges was that he had not discharged his duty as a responsible officer to safeguard the interest of the bank by securing adequate security before the grant of the loans to the dealers, and had not ensured supply of goods to the loanees. It is based upon the documentary evidence which has already been part of the record and copies thereof had been supplied to the petitioner. Under those circumstances, we do not think that there is any manifest error apparent on the face of the record warranting interference. It is then contended that no reasons have been given in support of the conclusions to

substantiate the charges. The enquiry officer had elaborately discussed each charge and given reasons which were considered by the disciplinary authority and reached the conclusion that the charges were proved. So had the appellate authority. They are not like a civil Court. "

(22) In the case of **R.S. Saini Vs. State of Punjab and others (Supra[13])**, the Hon'ble Supreme Court observed thus :

" High Court while exercising writ jurisdiction does not reverse a finding of inquiring authority on the ground that evidence adduced before it is insufficient. If there is some evidence to reasonably support conclusions of inquiring authority, it is not the function of the Court to review evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate its findings. Adequacy or reliability of evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings. "

(23) The ratio laid down in the case of **G.M. Tank Vs. State of Gujarat & another (Supra [4])** is distinguishable as in the said case both the charges were grounded upon same set of facts and evidence. In the present case, all the charges which were enquired into by the Enquiry Officer were not the subject matter before the criminal Court. In regard to the criminal case filed for prosecution under Section 420 read with Section 34 of the Indian Penal Code, the said case was with regard to grant of loan to one Shri Man Singh illegally with criminal intention and that was not an issue before the Enquiry Officer. In the said case the Hon'ble Supreme Court held thus :

"In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal Court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand. "

(24) For the aforementioned reasons and the dicta laid down by the Hon'ble Supreme Court in various cases cited above, it is clear that the High Court does not sit as a Court of appeal to re-appreciate the evidence and come to a different conclusion on the basis of such evidence. The

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Court can go into the process of decision-making, not in the decision itself. If the findings are based on no evidence, the Court has the power to interfere with the findings. In the present case, the charges have been found proved on basis of sufficient evidence. A bank employee who holds a position of trust where honesty and integrity are inbuilt requirements of service, it would not be proper to take lenient view in the matter.

(24) In the result, the writ petition is dismissed. No order as to costs.

Sd/-
SATISH K. AGNIHOTRI
Judge